

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

SERENA SEXTON,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-00483

MARTIN J. O'MALLEY,
*Commissioner of the
Social Security Administration*

Respondent.

ORDER

Pending is Petitioner Serena Sexton's Complaint [ECF 2], filed July 13, 2023, and her motion for judgment on the pleadings as articulated in her brief [ECF 13], filed January 11, 2024. Also pending is the Respondent Commissioner O'Malley's motion for judgment on the pleadings as articulated in his brief [ECF 14], filed February 9, 2024. This action was previously referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Eifert filed her PF&R on April 30, 2024. Magistrate Judge Eifert recommended that the Court grant Ms. Sexton's motion for judgment on the pleadings to the extent that it requests remand of the Commissioner's decision pursuant to sentence four of 42 U.S.C. § 405(g), deny Commissioner O'Malley's request to affirm the decision of the Commissioner, reverse the final decision of the Commissioner, remand this matter pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with the PF&R, and dismiss this case, with prejudice, and remove it from the docket of the Court.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal the Court’s order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on May 14, 2024. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [ECF 16], **GRANTS** Ms. Sexton’s motion for judgment on the pleadings [ECF 13], to the extent that it requests remand of the Commissioner’s decision pursuant to sentence four of 42 U.S.C. § 405(g), **DENIES** Commissioner O’Malley’s request to affirm the decision of the Commissioner [ECF 14], **REVERSES** the final decision of the Commissioner, **REMANDS** this matter pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with the PF&R, and **DISMISSES** this case, **WITH PREJUDICE**, and removes it from the docket of the Court.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: May 20, 2024



Frank W. Volk
Frank W. Volk
United States District Judge